NO. 80-428

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CLINTON MANGES AND DUVAL COUNTY RANCH COMPANY,
Petitioners,

v.

COUNTY OF DUVAL, ET AL,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF TEXAS

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STATEMENT OF THE CASE

This case can be best described as a delinquent ad valorem tax suit. A full reading of the opinion of the Texas Court of Civil Appeals (Petitioners' Appendix p. A-1) demonstrates that this case involves nothing more than the failure of the Petitioners to produce sufficient evidence to rebut a constitutionally valid rule of evidence presumption. As the lower Court of Civil Appeals noted

in its opinion: "Defensively, neither Manges nor the Ranch Company offered any testimony or explanation with respect to their non-payment of the taxes sought. We have concluded that the mere introduction of the silent minutes was not sufficient positive evidence to rebut the statutory presumptions created by Articles 7326 and 7336. Moreover, there was other evidence introduced before the Trial Court as to the regularity of the tax proceedings in question." (Petitioners' Appendix p. A-14).

REASONS FOR DENYING THE WRIT

I. The Texas statutory provisions creating a prima facie evidence presumption that all the requirements of law have been complied with as to the levying of taxes is not an unconstitutional permanent irrebutable presumption which denies due process of law.

Even though the Petitioners are not attacking the constitutionality of the Texas statutes *per se,* but rather their interpretation by the Texas Court of Civil Appeals (Petitioners' Petition p. 8, 17) it is necessary to note that the Texas statutes, Arts. 7326 & 7336, (Petitioners' Appendix p. E-1) involve legitimate and necessary presumptions of validity that can be rebutted by evidence in a trial. These statutes are not like the permanent irrebutable presumptions that have been held by this Court to violate the Due Process clauses of the Fifth and Fourteenth Amendments as in *Vlandis v. Kline,* 93 S.Ct. 2230, 412 U.S. 441, 37 L.Ed.2d 63 (1973) and *U.S. Dept. of Agriculture v. Murray,* 93 S.Ct. 2832, 413 U.S. 508 37 L.Ed.2d 767 (1973).

The Petitioners were afforded a trial where every opportunity was given to rebut the prima facie evidentiary presumptions created by the statutes. Due Process is not violated when the parties are afforded the opportunity in a full blown trial to rebut the existence of a tax levy and fail to do so because of insufficient evidence.

The Petitioners failed in their proof and now seek to make this case a controversy involving the Fifth and Fourteenth Amendment when no substantial federal question or conflict is shown.

II. The Decision of the Court of Civil Appeals For The Fourth Supreme Judicial District of Texas does not violate Due Process.

The thrust of Petitioners' claim for review, as Respondents see and understand it, is based on the exaggerated and incorrect assertion that the interpretation upon Articles 7326 and 7336 placed by the Texas Court of Civil Appeals has produced such an unfair burden of proof requirement upon them to rebut the presumption that taxes were legally levied as to constitute a denial of due process.

Any doubt as to the constitutional permissability of a presumption imposing a burden of persuasion of the nonexistence of a presumed fact in civil cases is laid to rest by *Dick v. New York Life Ins. Co.*, 359 U.S. 437, 79 S.Ct. 921, 3 L.Ed.2d 935 (1959).

As discussed in Texas Law of Evidence Civil and Criminal - Third Edition, Texas Practice, Volume 1 at page 76:

> ". . . the presumption places upon the party against whom it operates the burden of producing evidence

> sufficient to justify a finding of non-existence of the presumed fact.[49] This view has been adopted by the new Federal Rules of Evidence[50] and is the established rule in Texas.[51]"

In the instant case, simply put, the Petitioners simply failed to present sufficient evidence (i.e. failed to persuade) to the Trial Court to negate the permissible presumption created by the statutes, thus permitting the Trial Court, as the finder of fact, to find the taxes were validly levied. What Petitioners seek to do is to convert an "insufficiency of the evidence" question into a due process violation issue. Clearly, no amount of rhetoric, regardless of its effect "on large property holdings in south Texas", can or should convert this case into one warranting review by this Court. The Petitioners went to trial and were afforded adequate and full opportunity to rebut the presumption of the tax levy and they failed.

CONCLUSION

It is respectfully submitted that Petitioners have wholly failed to sustain their burden of establishing under U.S. Supreme Court Rule 17 that there are special and important reasons why the writ of certiorari should be granted. The decision below did not involve an important question of federal law which has not been, but should be, settled by this Court; nor has the Texas Court of Civil Appeals decided a federal question in a way to conflict with applicable decisions of this Court on the same matter. The Texas Court of Civil Appeals correctly held that the Trial Court correctly held that the defenses and evidence offered by the Petitioners was insufficient to prevail as against the presumptions and provisions of Articles 7326 and 7336.

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FOURTH SUPREME JUDICIAL DISTRICT OF TEXAS has been served upon Counsel for Petitioners, Mr. Mike A. Hatchell, P. O. Box 629, Tyler, Texas 75701, by placing same in the United States mail, properly addressed and postage pre-paid, on this the _____ day of December, 1980.

G. RUDOLPH GARZA, JR.